IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.4 OF 2005

Istiyak Ahmed Siddiqui
an Adult,
occupation Taxi-driver
resident of 236(A),
Kamrajnagar, Gulshan
Co-op Hsg. Society,
Eastern Express Highway
Ghatkopar East,
Mumbai 400 077 .. Petitioner.

Versus

1. A.N.Roy,
Commissioner of Police,to
Brihan Mumbai. ..

2. State of Maharashtra ..

3. The Superintendent of Jail
Nashik Road Central Prison,
Nashik Road. ..

4. The Superintendent of Jail
Thane Central Prison,
Thane. ..

5. The Secretary
Advisory Board (MPDA)
Mantralaya, Mumbai .. Respondents.

Shri Amin Solkar for the petitioner.

Shri S.R.Borulkar P.P. for the respondents.

CORAM : SMT.RANJANA DESAI
& D.B.BHOSALE, JJ.

DATED : 14TH JUNE, 2005

ORAL JUDGMENT: (PER D.B.BHOSALE, J.)

1. The petitioner in this writ petition under

Article 226 of the Constitution of India has challenged the order of detention dated 19th August, 2004 passed by the Commissioner of Police, Brihan Mumbai detaining Rashid Ahmed Siddique (for short "the detenu"), by exercising the powers under sub-section 2 of section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootlegers, Drug Offenders and Dangerous Persons Act, 1981 (for short "the said Act"), preventing him to continue his illegal and criminal activities as "slumlord" in the area of Kamrajnagar and adjoining area within the jurisdiction of Pant Nagar police station, Brihan Mumbai. This petition is filed by the brother of the detenu.

2. The detention order was passed on 19th August, 2004. It was served and executed on the detenu on 23rd August, 2004. The grounds of detention were served upon him alongwith material in support thereof on 24th August, 2004. Briefly stated the grounds of detention disclose the following material against the detenu: One Mahesh Madan Phad, who was working as Junior Engineer with Brihan Mumbai Municipal Corporation, Ghatkopar, while on round up on 17.4.2004 at 11.00 hours found that a part of the vacant land of the State Government at Kamrajnagar and adjoining areas was

being encroached upon by the detenu and his associates including co-detenu Appu Ahmed Siddiqui. They were unauthorisedly filling up low lying area and making foundation to build huts therein illegally. Therefore, Mahesh Phad referred the matter to his superiors and lodged a complaint at Pantnagar police station under section 52, 43 of the Maharashtra Regional and Town Planning Act, 1966 (for short "the MRTP Act"). In pursuance thereof Pantnagar police station registered a crime vide L.A.C. No.7 of 2004 and carried out further investigation. On 24.4.2004, the police interrogated the detenu in which he admitted his guilt. The statements of Ratnakar Ramchandra Jamburgekar and Shridhar Venktesh Choudhary were also recorded. On 25.4.2004 the detenu filed a bail application bearing No.22 of 2004 for grant of bail in L.A.C. No.7 of 2004. On 29.4.2004 the detenu was ordered to be released on bail and he availed the bail facility on 29.4.2004. The detaining authority further relied upon in-camera statements of witnesses "A" to "E". A perusal of the statements of all the witnesses reveal that the detenu and his accessories indulge in grabbing empty land of the government and construct huts thereon illegally at Kamrajnagar and adjoining areas thereto for sole purpose of selling them to

needy people. It further reveals that the detenu had constructed several illegal huts and sold them to ignorant buyers and thus amassed huge wealth. The specific instances have also been quoted by all the witnesses stating about illegal activities of the detenu and his accessories which consists of extortion of amounts from the witnesses, mercilessly beating them for getting huts vacated, use of deadly weapons such as knives, choppers and swords against the person who fail to pay cost of huts and their forcible removal from the hut and throwing their belongings out of the occupied hut. etc. On the basis of the aforestated activities of the detenu and the material supplied in support thereof by the sponsoring authority, the detaining authority recorded its subjective satisfaction that his activities fall within the meaning of the definition of "slumlord" under sub-section (f) of section 2 of the said Act. The detaining authority found that the acts of the detenu are causing and are calculated to cause harm and a feeling of insecurity amongst the people residing over there and his activities are prejudicial to maintenance of public order of the said areas of Brihan Mumbai. It was further found by the detaining authority that the activities of the detenu were causing loss of valuable land to the government. Having relied

upon this material, the detaining authority recorded its subjective satisfaction as to the dangerous activities of the detenu as a slumlord and to prevent him from acting in such prejudicial manner in future it passed the impugned order of detention.

3. The order of detention has been challenged mainly on the following grounds: (A) Exhibits A, B and C to the bail application No.22 of 2004 referred to in the grounds of detention in paragraph 4(a)(vi) were not furnished to the detaining authority alongwith the documents on the basis of which respondent no.1 formulated the grounds of detention; (B) As required under section 10 of the said Act the report of respondent No.1 was not placed before the Advisory Board; (C) Hindi translation of the entire page 4 consisting of a part of paragraph 3 and paragraph 4 of the grounds of detention alongwith the grounds in English was not supplied to the detenu; (D) A translation of the order passed in the remand application dated 25.4.2004 was not supplied and moreover the said application was not legible; (E) Copies of in-camera statements of witnesses "B" and "D" in Marathi language were not legible; and (F) There was considerable delay in making order of

detention from the date of recording of last in-camera statement of witness "E" until the order of detention. No other ground was raised by the learned counsel for the petitioner.

4. We heard the learned counsel for the parties at great length. Perused the petition, annexures thereto and the affidavits filed by the respondents. At the outset, we would like to deal with the principle submission of Mr.Solkar. He submitted that the detaining authority has referred to and relied upon the bail application No.22 of 2004, in paragraph 4(a)(vi) of the grounds of detention, which makes reference to exhibits "A", "B" and "C". Those three exhibits were vital and material documents and that they were not furnished to the detaining authority by the sponsoring authority for arriving at subjective satisfaction as to the necessity of detaining him by invoking the said Act. He further submitted that all the three exhibits would have influenced respondent no.1 in arriving at subjective satisfaction whether or not to pass the impugned order of detention. In support of this contention he invited our attention to the bail application filed by the detenu, co-detenu Appu Ahmed Siddique and co-accused Rekha Nagtilak. In paragraph 4, 5 and 6 thereof a

reference to Exhibit "A", "B" and "C" was made by the detenu and co-accused. Paragraphs 4, 5 and 6 are quoted below in extenso for better appreciation of the submission of Mr.Solkar:

> "4. That the Applicant No.1 was arrested by one officer of the Respondent i.e.API Mr.Balkrishna Pawar on 21.1.2003 in C.R.No.17 of 2003 and subsequently he was granted bail in the said matter by the Hon'ble Sessions Court on 6.6.2003 in Bail Application No.427 of 2003 by HHJ Shri N.D.Deshpande. The said matter is still pending in the Hon'ble court of Sessions for Greater Mumbai. Hereto annexed and marked as Ex.A is the copy of the said FIR.
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> 5. That incidentally on 21.10.2003 the same Police Officer i.e.Mr.Balkrishna Pawar then attached to the office of the Respondent came to be arrested by the officers of Anti-corruption Bureau in C.R.No.83 of 2003 under the section 7 of the prevention of corruption Act, 1988 at the instance of Applicant No.3. Whereupon Explanation the said Officer stated that because he arrested Applicant No.1 in the aforesaid matter therefore Applicant No.3 falsely implicated him in the said matter of the corruption. Hereto annexed and marked as Ex.B is the copy of the said FIR.
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> The said Police Officer was subsequently release on Bail by the order of the Hon'ble Spl.Court.
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> 6. That on 1.1.2004 the very same police officer API.Pawar gave threat to the Applicant No.3 of his life and of falls implication in case at the instance of his police friends any where. The Applicant No.3 immediately lodged his Complaint in writing to the higher authorities for the said incident on 15.1.2004. Hereto annexed and marked Ex.C is the copy of the said representation".

. Mr.Solkar further submitted that the aforesaid Exhibits and in particular Exhibits "B" and "C" clearly show that the detenu has been falsely implicated in L.A.C. No.7 of 2004. According to Mr.Solkar, that offence came to be registered against the detenu and co-accused at behest of Balkrishna Pawar against whom co-accused Rekha had lodged complaint under section 7 of the Prevention of Corruption Act. Exhibit "C" clearly demonstrates that such apprehension was expressed as early as in January 2004 by lodging a complaint to the higher authorities. Mr.Solkar, therefore, submitted that all the three exhibits mentioned in the aforesaid paragraphs were material and vital documents and would have definitely influenced the mind of respondent no.1 in arriving at subjective satisfaction whether or not to pass the impugned order of detention. In support of this contention Mr.Solkar placed reliance upon the judgments of the Apex Court in **Ashadevi V. K.Shivraj and Anr. AIR 1979 Supreme Court 447 and State of U.P. Vs. Kamal Kishore Saini AIR 1988 Supreme Court 208**.

5. On the other hand Mr.Borulkar, learned Public Prosecutor invited our attention to the reply affdiavit and in particular paragraph 19 thereof to contend that Exhibit "A", "B" and "C" to

the aforesaid bail application were not vital and material documents inasmuch as C.R.No.17/2003 and C.R.No.83/2003 were not relied upon while issuing the order of detention. All the three documents had no connection with L.A.C. No.7/2004 which was registered under section 52, 43 of MRTP Act. Mr.Borulkar, in support of his contentions, placed heavy reliance upon the judgment of this court in **Smt.Sharifa Abubaker Zariwala Vs. The Union of India & Ors. 1997 ALL MR (Cri.) 528**.

6. A perusal of the bail application and in particular paragraphs 4, 5 and 6 referred to above show that all the three documents, annexed to the bail application filed by the detenu, were admittedly not placed before the detaining authority. In so far as Exhibit "B" is concerned, it was FIR in C.R. No.83 of 2003 lodged by Rekha, co-accused in L.A.C. No.7 of 2004, against Balkrishna Pawar, a police officer, attached to the office of the respondent. Pawar being a police officer had registered an offence against the detenu bearing C.R.No.17 of 2003 in pursuance of the FIR, Exhibit "A" to the application, lodged by the sister of the detenu’s brother’s wife, who had committed suicide. It was further stated that the stand of the police officer Pawar in C.R.No.83 of

2003 was that since he had registered a criminal case against the detenu bearing C.R. No.17 of 2003 he was falsely implicated in the corruption case. Exhibit "C" to the bail application was a copy of the representation made by detenu stating that Pawar had given threats to the detenu of his life and of false implication at the instance of his police friends and that is how, according to the detenu, he has been falsely implicated in L.A.C. No.7 of 2004. In view of this it was contended that all the three Exhibits would have certainly influenced the detaining authority while recording its subjective satisfaction whether or not to pass the detention order. All the three exhibits centre around Balkrishna Pawar, a police officer. It is not disputed that after registration of C.R.No.83 of 2003 against Balkrishna Pawar under Prevention of Corruption Act, 1988 he came to be suspended and till this date he is under suspension. It is clear from the record that he had no connection whatsoever either with the police station to which he was attached before his suspension or the officer of the Municipal Corporation at whose instance L.A.C. No.7 of 2004 was registered against the detenu. As a matter of fact, after his suspension he had no access to the police station as also to the record concerning the detenu and in

particular L.A.C. No.7 of 2004. The said crime was registered against the detenu and others, after having found them encroaching upon the Government land. The police officer Pawar did not play any role whatsoever in the process of issuing the impugned order. We, therefore, find force in the submission advanced by Mr.Borulkar, learned P.P. that the documents Exhibits "A", "B" and "C" annexed to the bail application No.22 of 2004 were not material and vital documents. It is clear that the detaining authority did not rely on C.R. No.83/2003 and C.R. No.17 of 2003 or the documents in connection therewith while issuing the order of detention. In our opinion, the order of detention is perfectly valid and it does not get vitiated on the ground of non placement of Exhibits "A", "B" and "C" to the bail application No.22 of 2004 and non application of mind as alleged.

7. Coming to the judgment of the Apex Court in **Ashadevi V. K.Shivraj** (supra), though we found that the proposition laid down in the said judgment cannot be disputed it would not apply to the facts of the present case. In that case, admittedly three facts were not communicated or placed before the detaining authority before it passed the order of detention against the detenu, namely, (i) that

during interrogation of the detenu, in spite of request, neither the presence nor the consultation of the Advocate was permitted; (ii) that in spite of intimation to the Advocate in that behalf the detenu was not produced before the Magistrate on December 14, 1977 and (iii) that the confessional statements were squarely retracted by the detenu on December 22, 1977 at the first available opportunity while he was in judicial custody. The first two had a bearing on the question whether the confessional statements had been extorted under duress from the detenu or not while the third obviously was in relation to the confessional statements which formed the main foundation of the impugned order and as such were vital facts having a bearing on the main issue before the detaining authority. Further, in that case, the request to have presence or consultation of lawyer was turned down owing to some misconception of the legal position and, therefore, it was observed that such a request was made and refused ought to have been intimated to the detaining authority. The Apex Court further observed that in passing the detention order, the detaining authority based its decision on the detenu’s confessional statement of December 13 and 14, 1977 and, therefore, it was obligatory upon the Customs Officers to report the

retraction of those statements by the detenu on December 22, 1977 to the detaining authority and that it cannot be disputed that the fact of retraction would have its own impact one way or the other on the detaining authority before making up its mind whether or not to issue the impugned order of detention. Such are not the facts in the present case. Moreover, we have already recorded our findings that the documents Exhibits "A", "B" and "C" were not vital and they would not have influenced the detaining authority for making up its mind whether or not to issue the impugned order of detention. Therefore, the judgment in **Ashadevi V. K.Shivraj's** case (supra) would have no application to the facts of the present case.

8. Even in the judgment in **State of U.P. V. Kamal Kishore Saini's case** (supra) the detenus were supplied only with the copy of the FIR and also extract of the chargesheet and not the statements under section 161 of the Criminal Procedure Code. It was undisputed that the chargesheet was subsequently submitted in the Court and the respondents were furnished with the copies of the statements recorded under section 161 of Criminal Procedure Code long after the passing of the order of detention communicating the grounds of

detention. It is against this backdrop the Apex Court held that non supply of the document would vitiate the order of detention. In our opinion, that judgment would also not assist the detenu to persuade us to hold that the order of detention was vitiated on the ground of non placement of Exhibits "A", "B" and "C" to the said bail application before the detaining authority. Subjective satisfaction of detaining authority, in our opinion, cannot be said to have been vitiated.

9. In this connection, we may also usefully refer to a judgment of the Division Bench of this Court in **Smt.Sharifa Abubaker Zariwala** (supra). This court had an occasion to deal with similar situation wherein after considering the judgment of the Apex Court in the case of **Ashadevi** (supra) this court in paragraph 13 had observed thus:

> "13. ....Perusal of the judgment shows that non-placement of every material does not vitiate the satisfaction recorded by the detaining authority. It is only the non-placement and non-consideration of material which is vital for recording subjective satisfaction which vitiates the satisfaction recorded. Therefore, an enquiry has necessarily to be held by the Court as to whether the material which has been withheld or not placed or not considered is vital from the point of view of recording of the satisfaction. The judgment of the Supreme Court in Ashadevi's case is an authority

> for the proposition that material that is vital for recording satisfaction, that it is necessary to preventively detain the person concerned, if withheld and not considered by the detaining authority, then it vitiates the satisfaction. It is not an authority for the proposition that the Court cannot consider the nature of the material which is alleged to have been withheld or not considered by the detaining authority to find out whether the material withheld is vital for reaching the subjective satisfaction recorded by the detaining authority or not".
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> (emphasis supplied)

10. Besides the finding recorded by us that Exhibits "A", "B" and "C", annexed to the bail application No.22 of 2004, were not material and vital documents, the law settled by this court in **Sharifa Zariwala's** case also needs to be taken note of. It is clear that even if a particular document/documents of which atleast a detenu is not ignorant and/or admittedly they are his documents, and if on the ground of non placement of such documents the detenu assails the order of detention he should place such documents, before the court, to consider whether or not the document withheld was vital for reaching the subjective satisfaction recorded by the detaining authority. In other words, merely because certain documents were not placed before the detaining authority while arriving at subjective satisfaction, that by itself, in our opinion, would not vitiate the

satisfaction unless those documents are placed before this court so as to consider that they would have influenced the detaining authority for recording the subjective satisfaction as to the necessity of detaining the detenu by invoking the said Act. In the present case, admittedly all the three exhibits to the bail application were available with the detenu. The petitioner did not place them before us to consider its nature to find out whether or not they were vital for reaching the subjective satisfaction recorded by the detaining authority and/or influenced the detaining authority for arriving the subjective satisfaction.

11. That takes us to consider the next contention urged by Mr.Solkar, learned counsel for the petitioner, that under section 10 of the said Act, it was obligatory on part of respondent no.2 - State of Maharashtra to make reference to the Advisory Board within three weeks from the date of detention of a person and place before the said Advisory Board the grounds on which the order had been made and also the report submitted by respondent no.1 under section 3(3) of the said Act so also the documents which accompanied the said report. According to Mr.Solkar, the report under section 3(3) was not placed before the Advisory

Board. The petitioner, however, did not assert in the petition that the report under section 3(3) of the said Act was not supplied to the Advisory Board at all. The petitioner has simply stated in the petition, that respondent nos.2 to 5 are called upon to furnish the details on which reference was made and as to whether the said report was placed before the Advisory Board alongwith the reference. In other words, there is no specific contention in the petition that the report under section 3(3) was not placed before the Advisory Board alongwith the reference. Probably that is the reason why reply affidavit was not clear. We, therefore, perused the original file of the Advisory Board. The original file clearly shows that the report of respondent no.3 under section 3(3) was placed before the Advisory Board. In view thereof this contention of Mr.Solkar deserves to be rejected outright.

12. Mr.Solkar, next invited our attention to the grounds "M", "N" and "O" in the petition and urged that non supply of translation of the entire page 4 consisting of a part of para 3 and para 4 of the grounds of detention in Hindi language alongwith the original English grounds of detention and illegibility of the documents would vitiate the

satisfaction recorded in the impugned order. The grounds "M", "N" and "O" in the petition are quoted below in extenso for better appreciation of the submission:

> "M. The petitioner states that the Detaining Authority has not supplied the translation of the entire page No.4 consisting of a part of para 3 and para 4 of the grounds of detention in Hindi language alongwith the original English grounds of detention. The petitioner states that the Detaining Authority ought to have supplied the Hindi translation of the said page so as to enable the detenu in making an effective, proper and meaningful representation against his detention at the earliest. Failure to do so by Respondent No.1 has violated both the facet of Article 22(5) of the Constitution of India inasmuch as there is non-communication of the grounds of detention and consequently, the non-supply of the said Hindi translation of the said page has handicapped the detenu in making a effective, proper and meaningful representation against his detention thus rendering his detention and/or continued detention illegal, unconstitutional, null and void.
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> N. The petitioner says and submits that a document seems to be a Hindi translation of a remand application dated 25.4.2004, does not contain the order passed by the Ld.Magistrate on the Marathi copy which is also partly illegible and cannot be compared to verify whether or not it is the true Hindi translation of the document served upon the detenue and which has been relied upon by the Detaining Authority in formulating the grounds of detention. Failure on the part of the Detaining Authority to furnish the detenue the complete and entire legible copy of the said remand application to compare and check whether it has been properly translated and also the incomplete translation of the same is violative of

> both the facets of Article 22(5) of the Constitution of India thus, rendering the detenue's detention unconstitutional, unsustainable in law, null and void.
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> O. The petitioner says and submits that the Detaining Authority has furnished the detenue partial illegible document being in-camera statements of witnesses "B" and "D" in Marathi language as a result the detenue has been deprived of making an effective, meaningful and proper representation against his detention. The petitioner also says and submits that failure on the part of the Detaining Authority to furnish the detenue legible documents to compare and check whether it has been properly translated or not has infringed his right under Article 22(5) of the Constitution of India thus, rendering his detention illegal, unconstitutional, unsustainable, null and void".

. In support of this contention Mr.Solkar, invited our attention to the original set of the documents served on the detenu consisting of the grounds of detention and other material including a translation of the detention order and in particular a copy of Hindi translation of the detention order. Mr.Solkar submitted that since Hindi translation of page 4 was not supplied to the petitioner the detenu's right of making effective representation was vitiated. He further submitted that the remand application and in-camera statements of witnesses "B" and "D" were not legible which also affected his constitutional right to make representation to the concerned authority. On the other hand Mr.Borulkar, learned

P.P. placed before us the original file to show that every page of Hindi translation of the detention order was served on the detenu and he had signed in token of having received every page thereof. According to Mr.Borulkar, the petitioner is taking advantage of a typographical error committed while paginating a copy of Hindi translation of the grounds of detention. He also demonstrated before us that it was a mere typographical error and in fact no page was missing. He further submitted that even if it is assumed that in-camera statements of the witnesses "B" and "D" were not legible that would not vitiate the detention order since every in-camera statement was an independent ground and, therefore, even if order fails on one or two grounds the detention order sustains on remaining grounds. In support of this contention he placed reliance upon the judgment of this Court in **Prabhakar Menka Shetty Vs. S.Ramamurthy, Commissioner of Police for Greater Bombay and Others 1993 (2) Bom.C.R.3.** In so far as the remand application is concerned he pointed out that the name of the learned Magistrate only was not legible and, therefore, the contention of Mr.Solkar in respect thereof must be rejected.

13. It is worth noting that at no point of time

the detenu made any grievance to the concerned authorities either regarding non receipt of the entire page 4 consisting a part of para 3 and para 4 of the grounds or he ever demanded a copy thereof and even in respect of legibility of the documents as mentioned in grounds "M", "N", "O".

14. We perused the translation of the detention order served on the detenu which was placed on record by the petitioner. A set of the documents served on the detenu and which is placed on record by the petitioner, does not contain page 4. However, the respondent, in reply affidavit has denied this allegation and submitted that the detenu was supplied entire page 4 consisting of a part of para 3 and para 4 of the ground of detention in Hindi language and he had also put his signature on every page in token of having received copy thereof. A perusal of the original file clearly shows an endorsement made by the detenu on every page of Hindi translation of the grounds of detention including page 4. Moreover, admittedly the grounds of detention in English were also served on him. At this stage, it may be noticed that the detenu claims to be a doctor by profession and that he knows English language very well. Mr.Solkar did not dispute his knowledge of English.

Furthermore, his representation made to the State - Advisory Board was in English and it was also signed by him in English. Mr.Solkar, however, submitted that it was obligatory on the part of the detaining authority to supply translation of all documents and they cannot justify non-supply of Hindi translation on the ground that the detenu knows English very well. We are unable to accept the submission of Mr.Solkar. We are of the considered opinion that if a detenu admittedly knows English language very well, it would not be open for him to challenge the order of detention on the ground of non supply of translation of the documents relied upon by the detaining authority. Considering the fact that the detenu had put his signature in token of having received every page of the grounds of detention in Hindi and that the grounds of detention in English were also served on him and that the detenu knows English very well, we have no hesitation in holding that page 4 consisting of a part of para 3 and para 4 of the grounds was supplied to the detenu and even if it is assumed that page 4 was not supplied it would not vitiate the detenu's right to make representation, as vehemently submitted on his behalf. In so far as remand application dated 25.4.2004 is concerned, we found that only the name

of addressee, i.e. the learned Magistrate to whom it was addressed, was not legible. The contents of the documents were absolutely clear and legible and, therefore, it cannot be said that the detenu's right to make proper representation was vitiated and consequently the order of detention. So far as the order passed below remand application dated 25.4.2004 is concerned, it was only one line order in which the learned Magistrate had recorded that "the accused were produced before him at 1.30 p.m. and there was no complaint and they were remanded to P.C. till 27.4.2004". That order was legible and it was in English and, therefore, his contention that his right to make representation was affected must be rejected. It is true that the detenu has right to make representation as envisaged in Article 22(5) of the Constitution of India and the obligation is upon the appropriate government to consider such representation before confirming the detention. The order of detention is liable to be quashed if the constitutional obligation of clause 5 of Article 22 of the Constitution is not complied with. From the facts of the present case, in our opinion the detenu's right to make representation had not been vitiated for want of Hindi translation of certain documents and/or non-supply of legible copies of the

in-camera statements of two witnesses.

15. So far as in-camera statements of the witnesses "B" and "D" are concerned, it is true that some portion of their statements was not legible. However, that would not affect the order passed by the detaining authority. The law is well settled that even if order fails on one or more grounds the detention order can be sustained on remaining grounds if they are valid by taking recourse to section 5-A of the said Act. This court in similar situation, wherein similar submissions were advanced, in **Prabhakar Menka Shetty's** case (supra), in paragraph 10 observed thus:

> "10. Shri Shirodkar submitted that non supply of vital information about the quashing of externment order and detention orders to Detaining Authority vitiate the constitutional safeguard provided under Article 22(5) of the Constitution, and hence section 5-A of the National Security Act, cannot b attracted. The submission cannot be accepted taking into consideration the language and tenor of section 5-A in general and the use of phraseology "invalidate for any other reason whatsoever" in the residuary sub-clause (v) of section 5-A (a). The context indicates in no undertain terms that the clause is meant to include within the sweep of the provision each and every variety of grounds of invalidity. Acceptance of contrary view warned amount to defeating the very object behind section 5(A)". In this context out attention was

> invited to a decision of this Court in the case of (Chandra Shekhar Ojha V. A.K.Karnik and others), 1982, Criminal Law Journal, 1642. From the judgment it appears that attention of the Court was not drawn to the language employed in sub-clause (v). This Court had occasion to deal with the above decision in the case of (Abdul Nasir Khan V. L.Hmingliana and Others), 1991 Cri.L.J.507: 1991(1) Bom.C.R.183, wherein the above decision is held to be no more good law (para 36 of the report). In the case of (Rajesh P.Khushalani V.Mahendra Prasad), Criminal Writ Petition No.1412 of 1991 with Criminal Writ Petition No.1448 of 1991 decided in April 1992: reported in 1992(3) Bom.C.R.272, this Court has held that, even if one or more of the grounds fail on the ground of non-supply of the documents thereby infringing Article 22(5), the said infringement will not invalidate the order if it can be sustained on the basis of remaining grounds wherein the constitutional requirements of Article 22(5) are complied with".

. It is clear that even if the copies of in-camera statements of witnesses "B" and "D" were not legible, those two grounds will fail on the ground of non-supply of the documents thereby infringing Articles 22(5). However, the said infringement will not invalidate the order if it can be sustained on the basis of remaining grounds wherein the constitutional requirements of Article 22(5) are complied with. We are satisfied that the remaining grounds and the material in support thereof was before the detaining authority which, appear to us, was considered for arriving at the

subjective satisfaction. This Court is not expected to sit in appeal or review of the decision arrived at by the detaining authority. The impugned order, in our opinion, therefore, would sustain even on remaining grounds.

16. That takes us to consider the last submission of Mr.Solkar that the order of detention is vitiated on the ground of delay. He submitted that the impugned order was issued on 19.8.2004 i.e. after lapse of more than two months of recording of in-camera statement of witness "E" on 10.6.2004. According to Mr.Solkar the live link having been snapped the detaining authority ought to have refrained from clamping down preventive detention against the detenu. Admittedly, the incident in L.A.C. No.7 of 2004 occurred on 17.4.2004 and the last in-camera statement of witness "E" was recorded on 10.6.2004. The proposal for detention was initiated on 16.6.2004 and the order was passed on 19.8.2004. We are satisfied that there was sufficient material on record to pass the detention order and which shows propensity and potentiality of the detenu to indulge in similar prejudicial activities in future. In our opinion, in the facts and circumstances of the present case there is hardly

any delay in passing the detention order from the date of recording the in-camera statement of witness "E". Further, the nature of prejudicial activities of the detenu and his associates were such, as revealed from the grounds, that there existed constant threat to the people staying in the locality of ransom demand and of being evicted forcibly from the huts on the government land. Therefore, taking into consideration all the facts and circumstances it is not possible to hold in the first instance that there was delay in issuance of detention order and secondly, that it is not satisfactorily and adequately explained. Further more, in the facts of the present case it cannot be said that the grounds are stale or illusory or that there is no real nexus between the grounds and the impugned order of detention. We are satisfied with the explanation offerred by the respondent in reply affidavit. In similar situation this court in **Abdul Rehman Mohd. Shaban Khan V. R.H.Mendonca & Ors. 2000 ALL MR (Cri.) 177** where there was delay of three months, having considered the activities of the detenu disclosed in C.R. and incamera statements showing propensity and potentiality of a very grave nature held that there was live link between prejudicial activities and rationale of passing the order was not snapped on account of

delay. In our opinion, the ratio laid down in this judgment squarely applies to the facts of the present case. In the circumstances we are satisfied that the order of detention was necessary and is perfectly valid. There is no infirmity in the order and it deserves to be confirmed. In the result this writ petition fails and is dismissed as such. Rule is discharged.

(SMT.RANJANA DESAI, J.)

(D.B.BHOSALE, J.)

HIGH COURT AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.4 OF 2005

Date of Decision: 14th June, 2005.

For approval and signature:

The Hon'ble Smt. Justice : Ranjana Desai

And

The Hon'ble Mr.Justice : D.B. Bhosale

1. Whether Reporters of Local papers may be allowed to see the judgement ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur Office?

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL WRIT PETITION NO.4 OF 2005

(Istiyak Ahmed Siddiqui V. A.H.Roy & Others)

Office Notes, Office Memoranda of coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders.

Shri Amin Solkar for the petitioner.
Shri S.R.Borulkar P.P. for the respondents.

CORAM : SMT.RANJANA DESAI &
D.B.BHOSALE, JJ.

DATED: 14TH JUNE, 2005.

P.C.:

. For the reasons separately recorded in the judgment, the court dismisses the writ petition and discharges the Rule.

For Registrar